IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B.CRIMINAL MISC. PETITION NO. 663/2005
(Smt. Kanchan & Ors. V/s State of Rajasthan & Anr.)

Date of Order : 07/08/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Vijay Purohit, for the petitioners.
Mr. Ashok Upadhyay, public prosecutor.
Mr. H.S.Shrimalee for non-petitioner No.2.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioners have assailed the order dated 18.5.2005 passed by Session Judge, Balotra (for short 'the revisional court' hereinafter) in Criminal Revision No.42/2004, whereby the revisional court dismissed the revision petition filed by petitioners against the order dated 25.9.2004 passed by Additional Chief Judicial Magistrate, Balotra (for short 'the trial court' hereinafter).

I have heard learned counsel for the parties. Perused the orders of the trial court as well the revisional court.

Complainant non-petitioner No.2 Amba Prasad filed a

report before the trial court against the petitioners for the offences under Sections 406, 420 and 120-B IPC inter-alia alleging therein that he retired in the year 1988 and his wife had expired 12-13 years before. Smt. Kanchan is the wife of his son Mahesh Prasad. Dilip Kumar is the real brother of Smt. Kanchan and Hari Shankar and Bhagwanti are the maternal uncle and aunt of Smt. Kanchan. It is alleged that all these four persons entered into conspiracy in order to grab the gold jewellery of his wife and the gold jewellery prepared for the engagement and marriage of his son Mukesh Kumar as also the cash. On 23.6.2000 Smt. Kanchan demanded the gold jewellery and money on the pretext that the complainant being an old person and used to remain disturbed regarding safety of the ornaments and cash, therefore, the ornaments and cash may be handed over to her to take care of the same and assured the complainant to return the same on demand made by him. On the assurance given by Smt. Kanchan, the complainant handed over the gold ornaments and money to her. Thereafter Smt. Kanchan went to her parent's house twice. On 30.9.2004, petitioners No. 2 and 3 and maternal aunt of the petitioner No.1 came. Smt. Kanchan told that she has to go to her house. Smt. Kanchan along with her brother, maternal uncle and aunt went to her parent's house but she took away the gold ornaments and money and put a lock on the almirah as also took away the keys

with her. Thereafter, it is alleged that it came to the notice that Smt. Kanchan has lodged a case of cruelty against her husband Mahesh Prasad. After bail being granted by the Court at Bhinmal, when his son came, the almirah was searched but they did not find the gold ornaments and cash as also pass books of bank and post office etc. Thereafter, the complainant, his son Mahesh Prasad and daughter Pushpa went to Dilip Kumar's house, there Harishanker and Bhagwanti also came. When they inquired about the gold ornaments and money, they said that they have sold the ornaments and spent the money and refused to return the same. On the said report being sent to the police Station, Balotra for investigation under Section 156 (3) Cr.P.C. by the trial court, a case under Sections 406, 420 and 120-B IPC was registered and police investigated the matter. After investigation, the police filed a negative final report on the ground that Mahesh Prasad husband of Smt. Kanchan, is drunkard and used to demand dowry from Smt. Kanchan as also harassing and give beatings to her doubting her chastity, for which Smt. Kanchan has lodged a case against Mahesh Prasad at Bhinmal. Smt. Kanchan is living in Village Jhunjhadi with her brother Dilip Kumar along with her two sons Pawan and Dhiraj and maintaining herself and her sons by undertaking labour work. Even after lodging of the report by Smt. Kanchan, Mahesh Prasad used to give threatening to life to Smt. Kanchan. The

police concluded that the in order to save from the case lodged by Smt. Kanchan, the complainant has lodged the instant report.

By order dated 25.9.2004, the trial court took the cognizance of the offences under Sections 120-B and 406 IPC against the petitioners.

From the order of the trial court, it appears that prima-facie there is evidence of entrustment against the present petitioner No.1 and on demand not returning the jewellery belonging to the wife of the complainant non-petitioner No.2. So far as the petitioners No.2 and 3 are concerned, they are brother and maternal uncle of the petitioner No.1. The allegation against them is that they went along with the petitioner No.1 to her parent's house. This, itself cannot construe that they entered into criminal conspiracy with petitioner No.1 for committing the criminal breach of trust. In the circumstances, therefore, so far as the petitioner No.1 is concerned, there is ample evidence for the offence under Section 406 IPC and both the courts below have rightly held that prima-facie case is made out against the petitioner No.1.

So far as the petitioners No.2 and 3 are concerned, it is only on the apprehension that since petitioner No.1 went to

her parent's house along with them, therefore, they are also involved in the criminal conspiracy, the trial court took the cognizance against them. Therefore, in my view, to allow the order impugned against the petitioners No.2 and 3 would amount to abuse of the process of the court.

In the result, the criminal misc. petition filed on behalf of petitioner No.1 Smt. Kanchan has no merit and is accordingly dismissed. However, the petition filed on behalf of petitioners No.2 and 3 Dilip Kumar and Harishanker Dave is allowed and the order impugned dated 18.5.2005 passed by the revisional court as also order dated 25.9.2004 passed by the trial court are set aside and proceedings against the petitioners No.2 and 3 are quashed. Stay petition stands disposed of.

(H.R.PANWAR),J.

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